

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Gary Scherer,**

Plaintiff,

v.

**M & O Properties, LTD.,** an  
Oregon Limited Company; and Does  
1-10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Gary Scherer complains of M & O Properties, LTD., an Oregon Limited Company; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He suffers from a form of ataxia that significantly impairs his mobility and thus uses a wheelchair for mobility.

2. Defendant M & O Properties, LTD owned the real property located at or

1 about 8650 Reseda Blvd., Northridge, California, in January 2019.

2 3. Defendant M & O Properties, LTD owns the real property located at or  
3 about 8650 Reseda Blvd., Northridge, California, currently.

4 4. Plaintiff does not know the true names of Defendants, their business  
5 capacities, their ownership connection to the property and business, or their  
6 relative responsibilities in causing the access violations herein complained of,  
7 and alleges a joint venture and common enterprise by all such Defendants.  
8 Plaintiff is informed and believes that each of the Defendants herein,  
9 including Does 1 through 10, inclusive, is responsible in some capacity for the  
10 events herein alleged, or is a necessary party for obtaining appropriate relief.  
11 Plaintiff will seek leave to amend when the true names, capacities,  
12 connections, and responsibilities of the Defendants and Does 1 through 10,  
13 inclusive, are ascertained.

14  
15 **JURISDICTION & VENUE:**

16 5. The Court has subject matter jurisdiction over the action pursuant to 28  
17 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
18 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 6. Pursuant to supplemental jurisdiction, an attendant and related cause  
20 of action, arising from the same nucleus of operative facts and arising out of  
21 the same transactions, is also brought under California's Unruh Civil Rights  
22 Act, which act expressly incorporates the Americans with Disabilities Act.

23 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
24 founded on the fact that the real property which is the subject of this action is  
25 located in this district and that Plaintiff's cause of action arose in this district.

26  
27 **FACTUAL ALLEGATIONS:**

28 8. Plaintiff went to the shopping center in January 2019 to visit Bombay

1 Beauty Salon ("Salon") with the intention to avail himself of its goods or  
2 services, motivated in part to determine if the defendants comply with the  
3 disability access laws.

4 9. The Salon is a facility open to the public, a place of public  
5 accommodation, and a business establishment.

6 10. Parking spaces are one of the facilities, privileges, and advantages  
7 offered by Defendants to patrons of the Store.

8 11. Unfortunately, even though there were parking spaces marked and  
9 reserved for persons with disabilities in the parking lot serving the Salon during  
10 Plaintiff's visit, the parking spaces were not van accessible.

11 12. The two parking stalls measured about 104 inches and 109 inches in  
12 width, respectively, while the shared access aisle measured about 60 inches in  
13 width. These are not van accessible.

14 13. Meanwhile, even though there were van parking spaces marked and  
15 reserved for persons with disabilities in other parts of the shopping center,  
16 those parking space did not serve the Salon.

17 14. If plaintiff wanted to use the van parking spaces marked and reserved  
18 for persons with disabilities at the property, he would have to travel behind  
19 parked cars as well as travel with cars in the vehicular drive paths to make it  
20 back to the Salon. This is not accessible to plaintiff.

21 15. Currently, there is no accessible route from the van parking spaces on  
22 the property that leads back to the Salon.

23 16. Defendants have failed to maintain in operable working condition those  
24 features of facilities and equipment that are required to be readily accessible to  
25 and usable by persons with disabilities at the Subject Property.

26 17. Plaintiff personally encountered these barriers.

27 18. This inaccessible facility denied the plaintiff full and equal access and  
28 caused him difficulty, discomfort, and embarrassment.

1 19. The defendants have failed to maintain in working and useable  
2 conditions those features required to provide ready access to persons with  
3 disabilities.

4 20. The barriers identified above are easily removed without much  
5 difficulty or expense. They are the types of barriers identified by the  
6 Department of Justice as presumably readily achievable to remove and, in fact,  
7 these barriers are readily achievable to remove. Moreover, there are numerous  
8 alternative accommodations that could be made to provide a greater level of  
9 access if complete removal were not achievable.

10 21. Plaintiff will return to the Salon to avail himself of its goods or services  
11 and to determine compliance with the disability access laws. He is currently  
12 deterred from doing so because of his knowledge of the existing barriers. If the  
13 barriers are not removed, the plaintiff will face unlawful and discriminatory  
14 barriers again.

15 22. Given the obvious and blatant nature of the barriers and violations  
16 alleged herein, the plaintiff alleges, on information and belief, that there are  
17 other violations and barriers on the site that relate to his disability. Plaintiff will  
18 amend the complaint, to provide proper notice regarding the scope of this  
19 lawsuit, once he conducts a site inspection. However, please be on notice that  
20 the plaintiff seeks to have all barriers related to his disability remedied. See  
21 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
22 encounters one barrier at a site, he can sue to have all barriers that relate to his  
23 disability removed regardless of whether he personally encountered them).

24  
25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
26 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
27 Defendants.) (42 U.S.C. section 12101, et seq.)

28 23. Plaintiff re-pleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this  
2 complaint.

3 24. Under the ADA, it is an act of discrimination to fail to ensure that the  
4 privileges, advantages, accommodations, facilities, goods and services of any  
5 place of public accommodation is offered on a full and equal basis by anyone  
6 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
7 § 12182(a). Discrimination is defined, inter alia, as follows:

- 8 a. A failure to make reasonable modifications in policies, practices,  
9 or procedures, when such modifications are necessary to afford  
10 goods, services, facilities, privileges, advantages, or  
11 accommodations to individuals with disabilities, unless the  
12 accommodation would work a fundamental alteration of those  
13 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 14 b. A failure to remove architectural barriers where such removal is  
15 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
16 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
17 Appendix “D.”
- 18 c. A failure to make alterations in such a manner that, to the  
19 maximum extent feasible, the altered portions of the facility are  
20 readily accessible to and usable by individuals with disabilities,  
21 including individuals who use wheelchairs or to ensure that, to the  
22 maximum extent feasible, the path of travel to the altered area and  
23 the bathrooms, telephones, and drinking fountains serving the  
24 altered area, are readily accessible to and usable by individuals  
25 with disabilities. 42 U.S.C. § 12183(a)(2).

26 25. Any business that provides parking spaces must provide accessible  
27 parking spaces. 2010 Standards § 208. Under the 2010 Standards, one in  
28 every six accessible parking spaces must be van accessible. 2010 Standards §

1 208.2.4.

2 26. Here, the lack of a van parking space serving the Salon is a violation of  
3 the law.

4 27. Under the ADA, there must be at least one accessible route connecting  
5 every building on the same site. 2010 Standards § 206.2.2. Travel in the  
6 vehicular drive path with vehicles is not part of an accessible route.

7 28. Here, the failure to provide an accessible route is a violation of the law.

8 29. The Safe Harbor provisions of the 2010 Standards are not applicable  
9 here because the conditions challenged in this lawsuit do not comply with the  
10 1991 Standards.

11 30. A public accommodation must maintain in operable working condition  
12 those features of its facilities and equipment that are required to be readily  
13 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

14 31. Here, the failure to ensure that the accessible facilities were available  
15 and ready to be used by the plaintiff is a violation of the law.

16  
17 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
18 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
19 Code § 51-53.)

20 32. Plaintiff repleads and incorporates by reference, as if fully set forth  
21 again herein, the allegations contained in all prior paragraphs of this  
22 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
23 that persons with disabilities are entitled to full and equal accommodations,  
24 advantages, facilities, privileges, or services in all business establishment of  
25 every kind whatsoever within the jurisdiction of the State of California. Cal.  
26 Civ. Code §51(b).

27 33. The Unruh Act provides that a violation of the ADA is a violation of the  
28 Unruh Act. Cal. Civ. Code, § 51(f).

1 34. Defendants' acts and omissions, as herein alleged, have violated the  
2 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's  
3 rights to full and equal use of the accommodations, advantages, facilities,  
4 privileges, or services offered.

5 35. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
6 discomfort or embarrassment for the plaintiff, the defendants are also each  
7 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
8 (c).)

9  
10 **PRAYER:**

11 Wherefore, Plaintiff prays that this Court award damages and provide  
12 relief as follows:

13 1. For injunctive relief, compelling Defendants to comply with the  
14 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
15 plaintiff is not invoking section 55 of the California Civil Code and is not  
16 seeking injunctive relief under the Disabled Persons Act at all.

17 2. Damages under the Unruh Civil Rights Act, which provides for actual  
18 damages and a statutory minimum of \$4,000 for each offense.

19 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
20 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

21  
22 Dated: February 15, 2019

CENTER FOR DISABILITY ACCESS

23  
24  
25 By:



26  
27 Chris Carson, Esq.  
28 Attorney for plaintiff